

**SUMMONS
(CITACION JUDICIAL)**

ENDORSED SUM-100

FILED
FOR COURT USE ONLY
(SOLO PARA USO DEL TRIBUNAL)

NOV 23 2020

CLERK OF THE SUPERIOR COURT
Carolyn Lemos, Deputy

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO): EASTBAY EQUITIES, INC., an Ohio corporation;
EASTBAY EQUITIES MANAGEMENT, LLC, an Ohio limited liability company;
and DOES 1 through 10, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE): JUDIT LLAMAS, as an aggrieved
employee pursuant to the Private Attorneys General Act ("PAGA"), on behalf of the
State of California and other non-party Aggrieved Employees,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): René C. Davidson Courthouse

CASE NUMBER: (Número del Caso):

RC20081536

1225 Fallon Street, Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Bevin Allen Pike, Capstone Law, APC, 1875 Century Park East, Suite 1000, Los Angeles, CA 90067 - Tel. (310) 556-4811

DATE:

(Fecha)

NOV 23 2020

CHAD FINKLE

EXECUTIVE OFFICER/CLERK

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date)

1 Bevin Allen Pike (SBN 221936)
Bevin.Pike@capstonelawyers.com
2 Orlando Villalba (SBN 232165)
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6 Los Angeles, California 90067
Telephone: (310) 556-4811
7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiff Judit Llamas

ENDORSED
FILED
ALAMEDA COUNTY

NOV 23 2020

CLERK OF THE SUPERIOR COURT
By Carolyn Lemos, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ALAMEDA

RR20081536

13 JUDIT LLAMAS, as an aggrieved
employee pursuant to the Private Attorneys
14 General Act ("PAGA"), on behalf of the
State of California and other non-party
15 Aggrieved Employees,

16 Plaintiff,

17 vs.

18 EASTBAY EQUITIES, INC., an Ohio
corporation; EASTBAY EQUITIES
19 MANAGEMENT, LLC, an Ohio limited
liability company; and DOES 1 through 10,
20 inclusive,

21 Defendants.
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Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Judit Llamas, as an aggrieved employee and on behalf of the State of California
2 and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on September 17, 2020, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Judit Llamas is a resident of Tracy, in San Joaquin County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Crew employee from approximately November 2019 to January 2020. Plaintiff worked for Defendants at their Wendy's restaurant located at 1051 Airway Blvd, Livermore, California. During her employment, Plaintiff typically worked seven (7) or more hours per day, three (3) to five (5) days per week, and twenty (20) to thirty (30) hours per week, from 6:00 a.m. to 2:00 p.m. Throughout her employment, Plaintiff earned approximately \$15.00 per hour. Her job duties included, without limitation, cooking and preparing food, operating the cash register, taking customer orders, and cleaning and maintaining the store premises.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with an Arbitration Agreement during the onboarding process, which had to be reviewed and acknowledged immediately. In fact, upon information and belief, the Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process, including Acknowledgement of Receipt of Employee Handbook, Timekeeping Rules, Acknowledgement of California Meal Period and Rest Break Policy, and Receipt of Wendy's Safety Orientation Manual, among other documents. Also, employees did not have a meaningful opportunity to

1 negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants’
2 employees for them to sign on a take-it or leave-it basis at the time they were hired, along with
3 other on-boarding documents. Further, Defendants did not set forth in the agreement or
4 otherwise provide employees with the rules which will govern the arbitration, instead forcing
5 employees to seek this information out on their own (“The [American Arbitration Association]
6 Rules may be found at www.adr.org or by searching for ‘AAA Employment Arbitration Rules’
7 using a service such as www.Google.com or by asking the Company’s Human Resources
8 Department . . . for a copy of the rules.”)

9 8. EASTBAY EQUITIES, INC. was and is, upon information and belief, an Ohio
10 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
11 throughout this county and the State of California.

12 9. EASTBAY EQUITIES MANAGEMENT, LLC was and is, upon information
13 and belief, an Ohio limited liability company, and at all times hereinafter mentioned, an
14 employer whose employees are engaged throughout this county and the State of California.

15 10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
16 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
17 complaint and serve such fictitiously named Defendants once their names and capacities
18 become known.

19 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
20 were the partners, agents, owners, or managers of EASTBAY EQUITIES, INC. and EASTBAY
21 EQUITIES MANAGEMENT, LLC at all relevant times.

22 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
23 acts and omissions alleged herein was performed by, or is attributable to, EASTBAY
24 EQUITIES, INC.; EASTBAY EQUITIES MANAGEMENT, LLC; and/or DOES 1 through 10
25 (collectively, “Defendants” or “EASTBAY EQUITIES”), each acting as the agent, employee,
26 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants
27 and was acting within the course and scope of such agency, employment, joint venture, or
28 concerted activity with legal authority to act on the others’ behalf. The acts of any and all

1 Defendants were in accordance with, and represent, the official policy of Defendants.

2 13. At all relevant times, Defendants, and each of them, ratified each and every act
3 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
4 and abetted the acts and omissions of each and all the other Defendants in proximately causing
5 the damages herein alleged.

6 14. Plaintiff is informed and believes, and thereon alleges, that each of said
7 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
8 omissions, occurrences, and transactions alleged herein.

9 15. Under California law, Defendants are jointly and severally liable as employers
10 for the violations alleged herein because they have each exercised sufficient control over the
11 wages, hours, working conditions, and employment status of Plaintiff and other non-party
12 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
13 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
14 of employment, determined their rate of pay, and maintained their employment records.
15 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
16 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a common-
17 law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved
18 Employees, Defendants are jointly and severally liable for the civil penalties available to
19 Plaintiff and other non-party Aggrieved Employees under the law.

20 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
21 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
22 non-party Aggrieved Employees because Defendants have:

- 23 (a) jointly exercised meaningful control over the work performed by Plaintiff
24 and other non-party Aggrieved Employees;
- 25 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
26 Aggrieved Employees’ wages, hours, and working conditions, including
27 the quantity, quality standards, speed, scheduling, and operative details
28 of the tasks performed by Plaintiff and other non-party Aggrieved

1 Employees;

2 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
3 perform work which is an integral part of Defendants' businesses; and

4 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
5 Employees as a matter of economic reality in that Plaintiff and other non-
6 party Aggrieved Employees were dependent on Defendants, who shared
7 the power to set the wages of Plaintiff and other non-party Aggrieved
8 Employees and determined their working conditions, and who jointly
9 reaped the benefits from the underpayment of their wages and
10 noncompliance with other statutory provisions governing their
11 employment.

12 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
13 there has existed a unity of interest and ownership between Defendants such that any
14 individuality and separateness between the entities has ceased.

15 18. EASTBAY EQUITIES, INC.; EASTBAY EQUITIES MANAGEMENT, LLC;
16 and DOES 1 through 10 are therefore alter egos of each other.

17 19. Adherence to the fiction of the separate existence of Defendants would permit an
18 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
19 liability for the wrongful acts committed by them under the name EASTBAY EQUITIES.

20 20. Plaintiff further alleges, upon information and belief, that Defendants
21 EASTBAY EQUITIES, INC. and EASTBAY EQUITIES MANAGEMENT, LLC are alter egos
22 of each other for the following reasons:

23 (a) On the California Secretary of State's website
24 (<https://businesssearch.sos.ca.gov/>), EASTBAY EQUITIES, INC. and
25 EASTBAY EQUITIES MANAGEMENT, LLC share the same entity
26 address and mailing address, "399 TAYLOR BLVD SUITE 103,
27 PLEASANT HILL, CA 94523;"

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(b) According to the most recent “Statement of Information” forms filed with the California Secretary of State, EASTBAY EQUITIES, INC. and EASTBAY EQUITIES MANAGEMENT, LLC share the same officers and/or directors, including, but not limited to, William Casto, who serves as Chief Executive Officer of EASTBAY EQUITIES, INC., and as a manager of EASTBAY EQUITIES MANAGEMENT, LLC; and

(c) On information and belief, EASTBAY EQUITIES, INC. and EASTBAY EQUITIES MANAGEMENT, LLC utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants own and operate approximately 22 Wendy’s fast-food restaurant locations in California and Ohio. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Pleasant Hill, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

22. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

23. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Pleasant Hill, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-

1 exempt, hourly paid employees in California, irrespective of their work locations. Upon
2 information and belief, Defendants process payroll for departing employees in the same manner
3 throughout the State of California, regardless of the manner in which each employee's
4 employment ends.

5 24. Defendants continue to employ non-exempt or hourly paid employees in
6 California.

7 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
9 advisors knowledgeable about California labor and wage law, employment and personnel
10 practices, and about the requirements of California law.

11 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
12 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
13 were not recorded.

14 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
17 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
18 minute meal periods and that Plaintiff and other non-party Aggrieved Employees were not
19 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
20 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

21 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
23 periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one
24 (1) additional hour of pay at their regular rates of pay when they were not authorized and
25 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
26 and other non-party Aggrieved Employees were not authorized and permitted to take compliant
27 rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees
28 with payment of one (1) additional hour of pay at their regular rates of pay when they were not

1 authorized and permitted to take a compliant rest period.

2 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 receive certain wages for overtime compensation and that they were not receiving certain wages
5 for overtime compensation.

6 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive at least minimum wages for compensation and that they were not receiving at least
9 minimum wages for work that was required to be done off-the-clock. In violation of the
10 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
11 least minimum wages for work done off-the-clock.

12 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 receive complete and accurate wage statements in accordance with California law. In violation
15 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
16 provided complete and accurate wage statements.

17 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that they had a duty to maintain accurate and complete payroll records in
19 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
20 and intentionally failed to do so.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 timely payment of wages during their employment. In violation of the California Labor Code,
24 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
25 including, but not limited to, overtime wages, minimum wages, meal and rest period premiums,
26 and/or reporting time pay, within permissible time periods.

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1 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 timely payment of all wages earned upon termination of employment. In violation of the
4 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
5 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
6 and rest period premiums, and/or reporting time pay, within permissible time periods.

7 35. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 receive their full wages due without having to execute a release of claims.

10 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to be
12 paid reporting time pay when they reported to work for their scheduled shift but were put to
13 work for less than half of the regular schedule. In violation of the California Labor Code,
14 Defendants did not pay Plaintiff and other non-party Aggrieved Employees all reporting time
15 pay due.

16 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 suitable seating and/or have seats nearby to use during a lull in tasks that do require moving
19 about or standing.

20 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive reimbursement for all business-related expenses and costs they incurred during the
23 course and scope of their employment and that they did not receive reimbursement of applicable
24 business-related expenses and costs incurred.

25 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
27 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
28 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to

do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they were properly denied wages, all in order to increase Defendants' profits.

40. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

41. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

42. Plaintiff and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former employees and one or more of the alleged violations were committed against them.

43. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

(a) The aggrieved employee shall give written notice by online filing (hereinafter "Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days

1 of the postmark date of the Employee's Notice. Upon receipt of the
2 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
3 (65) calendar days of the postmark date of the Employee's Notice, the
4 aggrieved employee may commence a civil action pursuant to California
5 Labor Code section 2699 to recover civil penalties in addition to any other
6 penalties to which the employee may be entitled.

7 44. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
8 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
9 other than those listed in Section 2699.5 after the following requirements have been met:

- 10 (a) The aggrieved employee or representative shall give written notice by
11 online filing to the LWDA and by certified mail to the employer of the
12 specific provisions of the California Labor Code alleged to have been
13 violated (other than those listed in Section 2699.5), including the facts
14 and theories to support the alleged violation.
- 15 (b) An aggrieved employee's notice filed with the LWDA pursuant to
16 2699.3(c) and any employer response to that notice shall be accompanied
17 by a filing fee of seventy-five dollars (\$75).
- 18 (c) The employer may cure the alleged violation within thirty-three (33)
19 calendar days of the postmark date of the notice. The employer shall give
20 written notice by certified mail within that period of time to the aggrieved
21 employee or representative and the agency if the alleged violation is
22 cured, including a description of actions taken, and no civil action
23 pursuant to Section 2699 may commence. If the alleged violation is not
24 cured within the 33-day period, the employee may commence a civil
25 action pursuant to Section 2699.

26 45. On September 17, 2020, Plaintiff provided written notice by online filing to the
27 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
28 Code alleged to have been violated, including facts and theories to support the alleged

1 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
2 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
3 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
4 PAGA Case Number LWDA-CM-806665-20. A true and correct copy of Plaintiff's written
5 notice to the LWDA and Defendants dated September 17, 2020, is attached hereto as "Exhibit
6 1."

7 46. As of the filing date of this complaint, over 65 days have passed since Plaintiff
8 sent the initial LWDA Notice described above, and the LWDA has not responded that it intends
9 to investigate Plaintiff's claims, and Defendants have not cured the violations.

10 47. Thus, Plaintiff has satisfied the administrative prerequisites under California
11 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
12 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510,
13 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

14 48. Labor Code section 558(a) provides "[a]ny employer or other person acting on
15 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the Industrial Welfare Commission
17 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
18 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
19 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
20 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
21 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
22 criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney
23 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
24 herself, all other non-party Aggrieved Employees, and the State of California against
25 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
26 IWC wage order. Plaintiff, acting in the public interest as a private attorney general, does not
27 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
28 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC wage order.

49. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth above.

50. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

52. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

53. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

54. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth

below;

(b) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;

(c) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;

(d) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked as set forth below;

(e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth below;

(g) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;

(h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;

(i) Violation of Labor Code section 206.5 for requiring Plaintiff and other non-party Aggrieved Employees to execute a release of claims as a condition to receiving wages due to them, as set forth below;

(j) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their regular

1 scheduled shifts, as set forth below;

2 (k) Violation of Labor Code section 1198 for failing to provide suitable
3 seating to Plaintiff and other non-party Aggrieved Employees, as set forth
4 below; and

5 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
6 and other non-party Aggrieved Employees for all business expenses
7 necessarily incurred, as set forth below.

8 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

9 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

10 55. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
11 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and
12 non-party Aggrieved Employees' employment by Defendants.

13 56. At all relevant times herein set forth, California Labor Code section 512(a)
14 provides that an employer may not require, cause, or permit an employee to work for a period
15 of more than five (5) hours per day without providing the employee with a meal period of not
16 less than thirty (30) minutes, except that if the total work period per day of the employee is not
17 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
18 and the employee. Under California law, first meal periods must start after no more than five
19 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

20 57. At all relevant times herein set forth, California Labor Code section 226.7,
21 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
22 meal period mandated by an applicable order of the IWC.

23 58. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
24 and the applicable IWC Wage Order also require employers to provide a second meal period of
25 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
26 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
27 hours worked is no more than twelve (12) hours, the second meal period may be waived by
28 mutual consent of the employer and the employee only if the first meal period was not waived.

1 59. First, during the relevant time period, Defendants had, and continue to have, a
2 company-wide policy and/or practice of understaffing while assigning heavy workloads, which
3 resulted in a failure to provide adequate meal period coverage and prevented Plaintiff and other
4 non-party Aggrieved Employees from taking compliant meal periods, causing Plaintiff and
5 other non-party Aggrieved Employees to work off-the-clock without that time being recorded.
6 Additionally, Defendants did not schedule meal periods or failed to adhere to a schedule of meal
7 periods, resulting in Plaintiff and other non-party Aggrieved Employees waiting extended
8 periods of time before taking meal periods due to the heavy workload.

9 60. Second, Defendants implemented an electronic timekeeping system that locked
10 Plaintiff and other non-party Aggrieved Employees out and prevented them from clocking in
11 early before the end of their 30-minute meal period. As a result of Defendants' timekeeping
12 system, Plaintiff and other non-party Aggrieved Employees were prevented from accurately
13 recording when they had to return early from a meal period so that they could be compensated
14 for that time. Therefore, Defendants systematically failed to correctly record meal periods.
15 Furthermore, because Defendants frowned upon employees accruing meal period penalties,
16 Defendants' management would adjust Plaintiff's and other non-party Aggrieved Employees'
17 time records and/or pressured employees to clock out for meal periods to reflect compliant meal
18 periods, regardless of whether they had actually received a compliant meal period, in order to
19 strictly limit meal penalties that Defendants would otherwise owe. Consequently, Plaintiff and
20 other non-party Aggrieved Employees performed work during meal periods for which they were
21 not paid.

22 61. As a result of Defendants' practices and/or policies, Plaintiff and other non-party
23 Aggrieved Employees had to work through part or all of their meal periods, have their meal
24 periods interrupted, and/or wait extended periods of time before taking meal periods. For
25 example, during her employment, Plaintiff's meal periods were missed, late, cut short, and/or
26 interrupted at least once per month due to a lack of coverage resulting from having too few
27 employees on duty to handle the workload.

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1 62. In addition, during the relevant time period, other non-party Aggrieved
2 Employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second
3 30-minute meal period. Plaintiff and other non-party Aggrieved Employees did not sign valid
4 meal period waivers on days that they were entitled to meal periods and were not relieved of all
5 duties.

6 63. Moreover, Defendants had a company-wide policy of requiring all newly hired
7 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
8 the position that non-exempt, hourly paid employees had waived their rights to meal periods for
9 the entirety of their employment and, on that basis, did not provide them with all meal periods
10 to which they were entitled. Specifically, Defendants' "Meal Period Waiver For Less Than 6
11 Hour Workday" and "Waiver For Second Meal Period" forms provide that the waiver remains
12 in effect until the employee provides his or her manager with advanced notice of his or her
13 decision to revoke: "I understand I may revoke this waiver at any time by providing written
14 notice of the decision to do so. This waiver will remain in effect unless I exercise the option to
15 revoke it. If I decide to revoke this waiver, I understand *my revocation will be effective the next*
16 *business day.*" (Emphasis added.) Defendants' company-wide use of blanket meal period
17 waivers signed at or near the time of hire and imposition on employees to revoke the waivers in
18 advance and in writing, discouraged and impeded Plaintiff and other non-party Aggrieved
19 Employees from taking all meal periods to which they were entitled. And, Defendants'
20 presumption that second meal periods would not be provided for shifts in excess of ten (10)
21 hours but less than twelve (12) hours due to blanket meal period waivers discouraged other non-
22 party Aggrieved Employees from taking second meal periods.

23 64. What's more, an employer's obligation to provide a meal period is only
24 "triggered" when the employer "employs an employee for a work period of more than five hours
25 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
26 work for a full five hours, its meal break obligation is triggered.").

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1 [A]fter the meal break obligation is triggered . . . an employer is put to a
2 choice: it must (1) afford an off-duty meal period; (2) consent to a
3 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
4 obtain written agreement to an on-duty meal period if circumstances
5 permit. Failure to do one of these will render the employer liable for
6 premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5,
7 subd. 11(A), (B)).

8 65. Further, under Labor Code section 512(a) and the applicable IWC Wage Order,
9 employees may waive their second meal periods only if they took their first meal period. That
10 Defendants require employees to sign meal period waivers simultaneously at or near their time
11 of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because
12 Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees with meal
13 periods did not arise until Defendants had employed them for a full five (5) hours.

14 66. Defendants knew or should have known that as a result of their policies, Plaintiff
15 and other non-party Aggrieved Employees were not actually relieved of all duties to take timely,
16 uninterrupted meal periods. Defendants further knew or should have known that they did not
17 pay Plaintiff and other non-party Aggrieved Employees meal period premium wages when meal
18 periods were missed, late, short, and/or interrupted.

19 67. Defendants also have engaged in a company-wide practice and/or policy of not
20 paying meal period premiums owed when compliant meal periods are not provided. Because
21 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
22 received premium pay for missed, late, and interrupted meal periods.

23 68. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
24 Employees compliant meal periods and failed to pay the full meal period premiums due.
25 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
26 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
27 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
28 (g).

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FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

69. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other non-party Aggrieved Employees' employment by Defendants.

70. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

71. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

72. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

73. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices, including understaffing while assigning heavy workloads, resulted in a lack of rest period coverage and prevented Plaintiff and other non-party

1 Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.
2 Defendants also failed to schedule rest periods or adhere to a schedule of rest periods, which,
3 coupled with Defendants' failure to provide adequate rest period coverage, further led to
4 Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take
5 rest periods.

6 74. Furthermore, upon information and belief, Defendants maintained and
7 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and
8 other non-party Aggrieved Employees remain on Defendants' premises during their rest
9 periods. Upon information and belief, Defendants' company-wide on-premises rest period
10 policy prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all
11 duties for rest periods and caused them to perform work during rest periods.

12 75. As a result of Defendants' practices and policies, Plaintiff and other non-party
13 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
14 excess of 10 hours without being permitted and authorized to take all ten (10) minute rest
15 periods to which they were entitled. For example, Plaintiff worked through her first rest periods
16 at least once per month in order to complete all of the tasks and duties Defendants assigned to
17 her.

18 76. Defendants have also engaged in a company-wide policy and/or practice of not
19 paying all rest period premiums owed when compliant rest periods are not authorized and
20 permitted. Because of this policy and/or practice, Plaintiff and other non-party Aggrieved
21 Employees have not received premium pay for all missed rest periods.

22 77. Defendants' conduct violates the applicable IWC Wage Order and California
23 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
24 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
25 2699(a), (f), and (g).

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1 **FAILURE TO PAY OVERTIME**

2 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

3 78. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable wage order. California Labor Code
5 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
6 be the . . . standard conditions of labor for employees. The employment of any employee . . .
7 under conditions of labor prohibited by the order is unlawful.”

8 79. California Labor Code section 1198 and the applicable IWC Wage Order provide
9 that it is unlawful to employ persons without compensating them at a rate of pay either time-
10 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
11 worked by the person on a daily or weekly basis.

12 80. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
14 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
15 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
16 hours in a workweek.

17 81. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
19 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
20 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
21 behalf of, the employee, including shift differential pay, nondiscretionary bonuses, and
22 incentive pay.

23 82. California Labor Code section 510 codifies the right to overtime compensation
24 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
25 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
26 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
27 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
28 the seventh (7th) day of work.

1 83. Defendants willfully failed to pay all overtime wages owed to Plaintiff and other
2 non-party Aggrieved Employees. During the relevant time period, Plaintiff and other non-party
3 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in
4 excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of
5 forty (40) hours in a week, because all hours worked were not recorded.

6 84. As stated above, Defendants' systemic practice of understaffing created a lack of
7 meal period coverage. This lack of meal period coverage, coupled with Defendants' practice
8 of assigning heavy workloads and failure to schedule meal periods or failure to adhere to a
9 schedule of meal periods, prevented Plaintiff and other non-party Aggrieved Employees from
10 taking compliant meal periods and caused Plaintiff and other non-party Aggrieved Employees
11 to work off-the-clock without that time being recorded.

12 85. Moreover, Defendants' company-wide timekeeping system locked Plaintiff and
13 other non-party Aggrieved Employees out once they clocked out for a meal period and would
14 not permit them to clock back in from a meal before 30 minutes elapsed. Thus, Defendants'
15 timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from
16 recording all hours worked when their meal periods were shortened or interrupted. In addition,
17 upon information and belief, because Defendants frowned upon employees accruing meal
18 period penalties, Defendants pressured Plaintiff and/or other non-party Aggrieved Employees
19 to clock out for meal periods and/or adjusted employee time records to reflect compliant meal
20 periods, regardless of whether they had actually received a compliant meal period, in order to
21 strictly limit meal penalties that Defendants would otherwise owe. Consequently, Plaintiff
22 and/or other non-party Aggrieved Employees performed work during meal periods for which
23 they were not paid.

24 86. Defendants knew or should have known that as a result of these company-wide
25 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were working
26 during their meal periods, and were suffered or permitted to perform work for which they were
27 not paid. Because Plaintiff and other non-party Aggrieved Employees worked shifts of eight
28 (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work

1 qualified for overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved
2 Employees were not paid overtime wages for all of the overtime hours they actually worked.

3 87. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
4 the balance of overtime compensation as required by California law, violates the provisions of
5 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
6 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
7 2699(a), (f), and (g).

8 **FAILURE TO PAY MINIMUM WAGES**

9 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

10 88. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
11 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
12 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
13 Compensable work time is defined by the applicable wage order as "the time during which an
14 employee is subject to the control of an employer, and includes all the time the employee is
15 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,
16 § 11050(2)(K) (defining "Hours Worked").

17 89. As set forth above, due to Defendants' uniform practice of understaffing while
18 assigning heavy workloads, resultant lack of meal period coverage, and failure to schedule meal
19 periods or failure to adhere to a schedule of meal periods, Plaintiff and other non-party
20 Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they
21 were entitled and were required to work off-the-clock. And, as described above, Defendants'
22 timekeeping system did not permit Plaintiff and other non-party Aggrieved Employees to clock
23 back in early when their meal periods were interrupted or cut short. Furthermore, as stated
24 above, in order to limit meal penalties that Defendants would otherwise owe, Defendants
25 pressured Plaintiff and/or other non-party Aggrieved Employees to clock out for meal periods
26 and/or adjusted employee time records to reflect compliant meal periods.

27 90. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
28 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not

1 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
2 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
3 1197, and 1198.

4 91. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
5 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
6 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
7 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

8 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
9 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

10 92. At all relevant times herein, California Labor Code section 226(a) provides that
11 every employer shall furnish each of his or her employees an accurate and complete itemized
12 wage statement in writing, including, but not limited to, the name and address of the legal entity
13 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
14 rates of pay.

15 93. During the relevant time period, Defendants have knowingly and intentionally
16 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
17 inaccurate wage statements. For example, Defendants issued uniform wage statements to
18 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
19 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
20 the pay period, including overtime rates of pay, and the corresponding number of hours worked
21 at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
22 and 226(a)(9).

23 94. Because Defendants did not record the time Plaintiff and other non-party
24 Aggrieved Employees spent working during meal periods that were missed and/or interrupted
25 (and therefore time for which they should have been paid), Defendants did not list the correct
26 amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved
27 Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the
28 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff

1 and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list
2 the applicable hourly rates of pay in effect during the pay period and the corresponding accurate
3 number of hours worked at each hourly rate, in violation of section 226(a)(9).

4 95. The wage statement deficiencies also include, among other things, failing to list
5 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
6 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
7 the last four digits of his or her social security number or an employee identification number
8 other than a social security number; failing to list the name and address of the legal entity that
9 is the employer; failing to list the inclusive dates of the period for which aggrieved employees
10 were paid; and/or failing to state all hours worked as a result of not recording or stating the
11 hours they worked off-the-clock.

12 96. California Labor Code section 1198 provides that the maximum hours of work
13 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
14 forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment
15 of any employees for longer hours than those fixed by the order or under conditions of labor
16 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
17 are required to keep accurate time records showing when the employee begins and ends each
18 work period and meal period. During the relevant time period, Defendants failed, on a
19 company-wide basis, to keep accurate records of work period and meal period start and stop
20 times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. As
21 stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s
22 and other non-party Aggrieved Employees’ time records by recording that compliant meal
23 periods were taken regardless of if or when meal periods were actually taken, and thereby failed
24 to keep accurate records of meal start and end times for Plaintiff and other non-party Aggrieved
25 Employees. Furthermore, in light of Defendants’ failure to provide other non-party Aggrieved
26 Employees with second 30-minute meal periods to which they were entitled, Defendants kept
27 no records of meal start and end times for second meal periods.

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1 97. California Labor Code section 1174(d) provides that “[e]very person employing
2 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
3 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
4 plants or establishments at which employees are employed, payroll records showing the hours
5 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
6 applicable piece rate paid to, employees employed at the respective plants or establishments. . .
7 .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully
8 failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved
9 Employees showing the daily hours they worked and the wages paid thereto as a result of failing
10 to record the off-the-clock hours that they worked.

11 98. Because Defendants’ violations of 226(a) and 1174(d) were committed against
12 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
13 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5,
14 and/or 2699(a), (f), and (g).

15 **FAILURE TO PAY WAGES DURING EMPLOYMENT**
16 **VIOLATION OF LABOR CODE SECTION 204**

17 99. At all relevant times herein set forth, California Labor Code section 204 requires
18 that all wages earned by any person in any employment between the 1st and the 15th days,
19 inclusive, of any calendar month, other than those wages due upon termination of an employee,
20 are due and payable between the 16th and the 26th day of the month during which the labor was
21 performed. Labor Code section 204 further provides that all wages earned by any person in any
22 employment between the 16th and the last day, inclusive, of any calendar month, other than
23 those wages due upon termination of an employee, are due and payable between the 1st and the
24 10th day of the following month.

25 100. At all relevant times herein, California Labor Code section 204 also requires that
26 all wages earned for labor in excess of the normal work period shall be paid no later than the
27 payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor
28 Code section 204 provides that the requirements of this section are deemed satisfied by the

1 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
2 than seven (7) calendar days following the close of the payroll period.

3 101. During the relevant time period, Defendants failed to pay Plaintiff and other non-
4 party Aggrieved Employees all wages due to them, including, but not limited to, overtime
5 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within
6 any time period specified by California Labor Code section 204.

7 102. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES UPON TERMINATION**

10 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

11 103. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
12 that if an employer discharges an employee, the wages earned and unpaid at the time of
13 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
14 her employment, his or her wages shall become due and payable not later than seventy-two (72)
15 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
16 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
17 quitting.

18 104. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
19 Employees who are no longer employed by Defendants all their earned wages, including, but
20 not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or
21 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their
22 leaving Defendants' employ in violation of California Labor Code sections 201, 202, and 203.

23 105. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
24 who are no longer employed by Defendants their wages earned and unpaid at the time of
25 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
26 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
27 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
28 (g).

UNLAWFUL REQUIREMENT FOR RELEASE OF CLAIMS AS A CONDITION TO RECEIVING WAGES

VIOLATION OF LABOR CODE SECTION 206.5

106. California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right “on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee.”

107. During the relevant time period, on information and belief, Defendants required Plaintiff and other non-party Aggrieved Employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, Defendants required Plaintiff and other non-party Aggrieved Employees to sign verifications at the end of each pay period, stating that they had taken all meal and rest periods, regardless of if they were provided with a compliant meal period or were permitted or authorized to take a compliant rest period. Defendants compelled Plaintiff and other non-party Aggrieved Employees to sign this false verification when they, in fact, had not received all earned and unpaid wages, including overtime wages, minimum wages, and meal and rest period premium wages. Defendants' policy and practice of requiring Plaintiff and other non-party Aggrieved Employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

108. Defendants' policy and practice of requiring Plaintiff and other non-party Aggrieved Employees to release their claims for unpaid wages is in violation of California Labor Code section 206.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PAY REPORTING TIME PAY

VIOLATION OF LABOR CODE SECTION 1198

109. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor

1 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
2 shall be the . . . standard conditions of labor for employees. The employment of any employee
3 . . . under conditions of labor prohibited by the order is unlawful.”

4 110. California Code of Regulations, Title 8, section 11050(5)(A) provides that
5 “[e]ach workday an employee is required to report for work and does report, but is not put to
6 work or is furnished less than half said employee’s usual or scheduled day’s work, the employee
7 shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2)
8 hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be
9 less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to
10 guarantee at least partial compensation for employees who report to work expecting to work a
11 specified number of hours, and who are deprived of that amount because of inadequate
12 scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal.
13 App. 4th 556 (2012).

14 111. Upon information and belief, Defendants violated California Labor Code section
15 1198 and California Code of Regulations, Title 8, section 11050(5), because Defendants failed
16 to pay Plaintiff and other non-party Aggrieved Employees reporting time pay when they
17 reported to work for their scheduled shift but were put to work for less than half of the regular
18 schedule.

19 112. During the relevant period, Defendants had a company-wide practice of sending
20 Plaintiff and other non-party Aggrieved Employees home early from their shifts, including
21 before they had worked at least half of their regular shift, but would not pay Plaintiff and other
22 non-party Aggrieved Employees for half of their scheduled shift. Although Plaintiff and other
23 non-party Aggrieved Employees would report to work based on the schedule that Defendants
24 provided to them, Defendants would send them home before they had worked at least half of
25 their scheduled shifts without giving them reporting time pay. For example, Plaintiff would
26 report to work and, 1-2 times per month, would be told to go home after she had worked only
27 two (2) hours because business was slow, yet was not paid for half of her scheduled shift.
28 Accordingly, Plaintiff and other non-party Aggrieved Employees were not properly

1 compensated with reporting time pay in violation of California Labor Code section 1198.

2 113. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
3 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g)

4 **FAILURE TO PROVIDE SUITABLE SEATING**
5 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
6 **REGULATIONS, TITLE 8, SECTION 11050(14)(B)**

7 114. At all relevant times herein, California Labor Code section 1198 makes it illegal
8 to employ an employee under conditions of labor that are prohibited by the applicable wage
9 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
10 fixed by the commission shall be the . . . standard conditions of labor for employees. The
11 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

12 115. California Code of Regulations, Title 8, section 11050(14)(B) provides that
13 “[w]hen employees are not engaged in the active duties of their employment and the nature of
14 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
15 proximity to the work area and employees shall be permitted to use such seats when it does not
16 interfere with the performance of their duties.”

17 116. During the relevant time period, Defendants violated California Labor Code
18 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
19 Plaintiff and other non-party Aggrieved Employees were not provided with suitable seats in
20 reasonable proximity to their work areas and, therefore, effectively not allowed to sit, even
21 during lulls in their work duties.

22 117. Plaintiff alleges that Defendants’ California restaurants are generally similar in
23 their layout and design and there was, and continues to be, space near their work areas (with
24 reasonable or no modification to these work areas) to allow for the presence and use of a seat
25 or stool by Plaintiff and other non-party Aggrieved Employees during lulls in operation.
26 Defendants could have provided Plaintiff and other non-party Aggrieved Employees with a seat
27 or stool in their work areas, but instead denied Plaintiff and other non-party Aggrieved
28 Employees suitable seating altogether and effectively forced Plaintiff and other non-party

1 Aggrieved Employees to stand throughout the day.

2 118. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
3 with seats or stools in reasonable proximity to their work areas to allow them to use seats when
4 it would not interfere with the performance of their duties for times when they were not engaged
5 in active duties that require standing. In other words, to the extent Plaintiff and other non-party
6 Aggrieved Employees engaged in duties in which the nature of the work required standing,
7 Defendants denied them the use of seats nearby during lulls in their work duties. Moreover,
8 Defendants did not inform Plaintiff and other non-party Aggrieved Employees of their rights to
9 a seat or stool under California law.

10 119. As a result of Defendants' company-wide policy and/or practice effectively
11 prohibiting employees from sitting at any time, even when they were not engaged in active
12 duties requiring standing, and company-wide failure to provide seats in reasonable proximity to
13 their work areas, Plaintiff and other non-party Aggrieved Employees were forced to stand
14 during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and
15 other non-party Aggrieved Employees violated and continues to violate California Labor Code
16 section 1198 and IWC Wage Order 5-2001, Section 14(B).

17 120. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

19 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

20 **VIOLATION OF LABOR CODE SECTION 2802**

21 121. At all times herein set forth, California Labor Code section 2802 provides that
22 an employer must reimburse employees for all necessary expenditures and losses incurred by
23 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
24 to prevent employers from passing off their cost of doing business and operating expenses on
25 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
26 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or
27 equipment are required by the employer or are necessary to the performance of a job, such tools
28 and equipment shall be provided and maintained by the employer, except that an employee

1 whose wages are at least two (2) times the minimum wage may provide and maintain hand tools
2 and equipment customarily required by the particular trade or craft.”

3 122. First, during the relevant time period, Defendants had a company-wide policy of
4 requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
5 vehicles to carry out company business, such as picking up restaurant supplies, but failed to
6 reimburse them for all costs of travel, including mileage. For example, on more than one
7 occasion, Plaintiff was required to drive her vehicle approximately 13 miles round trip to
8 another restaurant location owned by Defendants in Livermore, California to pick up ingredients
9 and supplies. Although Defendants required Plaintiff and other non-party Aggrieved
10 Employees use their own vehicles and complete these tasks as part of their job duties,
11 Defendants never reimbursed them for their travel expenses.

12 123. Second, during the relevant time period, Defendants, on a company-wide basis,
13 required Plaintiff and other non-party Aggrieved Employees to report to work wearing clean
14 uniforms while simultaneously failing to provide employees with an adequate number of those
15 uniforms. This forced Plaintiff and other non-party Aggrieved Employees to clean their
16 uniforms frequently and incur expenses for doing so. For example, Plaintiff was only given two
17 (2) uniform shirts, one (1) uniform hat, and one (1) uniform apron during her employment. Due
18 to the nature of her work, Plaintiff’s uniform would become stained and/or acquire an unpleasant
19 odor, and Plaintiff would be required to wash these uniforms 2-3 times per week.

20 124. Defendants could have provided Plaintiff and other non-party Aggrieved
21 Employees with the actual tools required for use on the job, such as company vehicles and an
22 adequate number of uniforms and/or access to laundering services. Or, Defendants could have
23 reimbursed employees for their mileage, travel expenses, and laundering costs. Instead,
24 Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved
25 Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
26 wage.

27 125. Defendants’ company-wide policy and/or practice of passing on their operating
28 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code

1 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
2 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

3 **REQUEST FOR JURY TRIAL**

4 Plaintiff requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
7 judgment against Defendants, jointly and severally, as follows:

8 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
9 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

10 **As to the First Cause of Action**

11 2. That the Court declare, adjudge and decree that Defendants violated the
12 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
13 Employees: 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516,
14 and 1198 (by failing to authorize and permit all rest periods); 510 and 1198 (by failing to pay
15 all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum
16 wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
17 statements and maintain accurate payroll records); 204 (by failing timely to pay all earned wages
18 during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon
19 termination); 206.5 (by requiring employees to execute a release of claims for wages due); 1198
20 (by failing to provide reporting time pay); 1198 (by failing to provide suitable seating); and
21 2802 (by failing to reimburse business expenses).

22 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
23 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
24 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

25 4. For attorneys' fees and costs pursuant to California Labor Code section
26 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
27 Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
28 1182.12, 1194, 1197, 1198, and 2802;

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5. For pre-judgment and post-judgment interest as provided by law; and

6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: November 23, 2020

Respectfully submitted,

Capstone Law APC

By: 

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Orlando Villalba
Daniel Jonathan
Trisha K. Monesi

Attorneys for Plaintiff Judit Llamas

EXHIBIT “1”



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September 17, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Judit Llamas v. Eastbay Equities, Inc., et al.*

Dear PAGA Administrator:

This office represents Judit Llamas in connection with her claims under the California Labor Code. Ms. Llamas was an employee of EASTBAY EQUITIES, INC. and/or EASTBAY EQUITIES MANAGEMENT, LLC. For the purpose of this letter, Ms. Llamas collectively refers to these entities as "EASTBAY."

The employers may be contacted directly at the addresses below:

EASTBAY EQUITIES, INC.
399 TAYLOR BLVD, SUITE 103
PLEASANT HILL CA 94523

EASTBAY EQUITIES MANAGEMENT, LLC
399 TAYLOR BLVD, SUITE 103
PLEASANT HILL CA 94523

Ms. Llamas intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Llamas seeks relief on behalf of herself, the State of California, and other persons who are or were employed by EASTBAY as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

EASTBAY employed Ms. Llamas as an hourly paid, non-exempt employee from approximately November 2019 to January 2020. Ms. Llamas worked for EASTBAY as a Crew employee at the Wendy's restaurant located at 1051 Airway Blvd, Livermore, California 94551. During her employment, Ms. Llamas typically worked seven (7) or more hours per day, three (3) to five (5) days per week, and twenty (20) to thirty (30) hours per week, from 6:00 a.m. to 2:00 p.m. Throughout

Ms. Llamas's employment with EASTBAY, she earned approximately \$15.00 per hour. Her job duties included, without limitation, cooking and preparing food, operating the cash register, taking customer orders, and cleaning and maintaining the store premises.

EASTBAY committed one or more of the following Labor Code violations against Ms. Llamas, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

EASTBAY's Company-Wide and Uniform Payroll and HR Practices

EASTBAY EQUITIES, INC. and EASTBAY EQUITIES MANAGEMENT, LLC are an Ohio corporation and limited liability company, respectively. EASTBAY owns and operates approximately 22 Wendy's fast-food restaurant locations in California and Ohio. Upon information and belief, EASTBAY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Pleasant Hill, California, for all non-exempt, hourly paid employees working for EASTBAY in California, including Ms. Llamas and other aggrieved employees. At all relevant times, EASTBAY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Llamas and other aggrieved employees, regardless of its location or position.

Upon information and belief, EASTBAY maintains a centralized Payroll department at its corporate headquarters in Pleasant Hill, California, which processes payroll for all non-exempt, hourly paid employees working for EASTBAY in California, including Ms. Llamas and other aggrieved employees. Further, EASTBAY issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Llamas and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, EASTBAY utilized the same methods and formulas when calculating wages due to Ms. Llamas and other aggrieved employees in California.

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53

¹ These facts, theories, and claims are based on Ms. Llamas's experience and counsel's review of those records currently available relating to Ms. Llamas's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Llamas reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, EASTBAY had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which resulted in a failure to provide adequate meal period coverage and prevented Ms. Llamas and other aggrieved employees from taking compliant meal periods, causing Ms. Llamas and other aggrieved employees to work off-the-clock without that time being recorded. Additionally, EASTBAY did not schedule meal periods or failed to adhere to a schedule of meal periods, resulting in Ms. Llamas and other aggrieved employees waiting extended periods of time before taking meal periods due to the heavy workload.

Second, EASTBAY implemented an electronic timekeeping system that locked Ms. Llamas and other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of EASTBAY's timekeeping system, Ms. Llamas and other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time. Therefore, EASTBAY systematically failed to correctly record meal periods. Furthermore, because EASTBAY frowned upon employees accruing meal period penalties, EASTBAY's management would adjust Ms. Llamas's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had actually received a compliant meal period, in order to strictly limit meal penalties that EASTBAY would otherwise owe. Consequently, Ms. Llamas and other aggrieved employees performed work during meal periods for which they were not paid.

As a result, Ms. Llamas and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during her employment, Ms. Llamas's meal periods were missed, late, cut short, and/or interrupted at least once per month, due to a lack of coverage resulting from having too few employees on duty to handle the workload.

In addition, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Ms. Llamas and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, EASTBAY had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. EASTBAY took the position that non-exempt, hourly paid employees had waived their rights to meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Specifically, EASTBAY's "Meal Period Waiver For Less Than 6 Hour Workday" and "Waiver For Second Meal Period" forms provide that the waiver remains in effect until the employee provides his or her manager with advanced notice of his or her decision to revoke: "I understand I may revoke this waiver at any time by providing written notice of the decision to do so. This waiver will remain in effect unless I exercise the option to revoke it. If I decide to revoke this waiver, I

understand *my revocation will be effective the next business day.*” (Emphasis added.) EASTBAY’s company-wide use of blanket meal period waivers signed at or near the time of hire and imposition on employees to revoke the waivers in advance and in writing, discouraged and impeded Ms. Llamas and other aggrieved employees from taking all meal periods to which they were entitled. And, EASTBAY’s presumption that second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket meal period waivers discouraged other aggrieved employees from taking second meal periods.

What’s more, an employer’s obligation to provide a meal break is only “triggered” when the employer “employs an employee for a work period of more than five hours per day.” *Brinker*, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.”).

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

Further, under Labor Code section 512(a) and the applicable IWC Wage Order, employees may waive their second meal periods only if they took their first meal period. That EASTBAY requires aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because EASTBAY’s obligation to provide Ms. Llamas and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

EASTBAY knew or should have known that as a result of its policies, that Ms. Llamas and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. EASTBAY further knew or should have known that it did not pay Ms. Llamas and other aggrieved employees all meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, EASTBAY engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Llamas and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that EASTBAY did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. In addition to an hourly wage, EASTBAY paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, because EASTBAY failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, EASTBAY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Llamas and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, EASTBAY regularly failed to authorize and permit Ms. Llamas and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, EASTBAY's company-wide practices, including understaffing while assigning heavy workloads, resulted in a lack of rest period coverage and prevented Ms. Llamas and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. EASTBAY also failed to schedule rest periods or adhere to a schedule of rest periods, which, coupled with EASTBAY's failure to provide adequate rest period coverage, further led to Ms. Llamas and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, EASTBAY maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Llamas and other aggrieved employees remain on EASTBAY's premises during their rest periods. Upon information and belief, EASTBAY's company-wide on-premises rest period policy prevented Ms. Llamas and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result, Ms. Llamas and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Ms. Llamas worked through her first rest periods at least once per month in order to complete all of the tasks and duties EASTBAY assigned to her.

EASTBAY also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Llamas and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that EASTBAY did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because EASTBAY did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations,

such incentive pay and/or nondiscretionary bonuses, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, EASTBAY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Llamas and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

EASTBAY willfully failed to pay all overtime wages owed to Ms. Llamas and other aggrieved employees. During the relevant time period, Ms. Llamas and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant period, as stated above, EASTBAY's systemic practice of understaffing created a lack of meal period coverage. This lack of meal period coverage, coupled with EASTBAY's practice of assigning heavy workloads and failure to schedule meal periods or failure to adhere to a schedule of meal periods, prevented Ms. Llamas and other aggrieved employees from taking compliant meal periods and caused Ms. Llamas and other aggrieved employees to work off-the-clock without that time being recorded.

Moreover, EASTBAY's company-wide timekeeping system locked Ms. Llamas and other aggrieved employees out once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed. Thus, EASTBAY's timekeeping system prevented Ms. Llamas and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted. In addition, upon information and belief, because EASTBAY frowned upon employees accruing meal period penalties, EASTBAY pressured Ms. Llamas and/or other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had actually received a compliant meal period, in order to strictly limit meal penalties that EASTBAY would otherwise owe. Consequently, Ms. Llamas and/or other aggrieved employees performed work during meal periods for which they were not paid.

EASTBAY knew or should have known that as a result of these company-wide practices and/or policies, Ms. Llamas and other aggrieved employees were working during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Llamas and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week

or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Llamas and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, EASTBAY did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. EASTBAY failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, EASTBAY failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Llamas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

As stated, due to EASTBAY's uniform practice of understaffing while assigning heavy workloads, resultant lack of meal period coverage, and failure to schedule meal periods or failure to adhere to a schedule of meal periods, Ms. Llamas and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. And, as described above, EASTBAY's timekeeping system did not permit Ms. Llamas and other aggrieved employees to clock back in early when their meal periods were interrupted or cut short. Furthermore, as stated above, in order to limit meal penalties that EASTBAY would otherwise owe, EASTBAY pressured Ms. Llamas and/or other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods.

Thus, EASTBAY did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, EASTBAY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, EASTBAY regularly failed to pay at least minimum wages to Ms. Llamas and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Ms. Llamas and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. EASTBAY has not provided Ms. Llamas and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

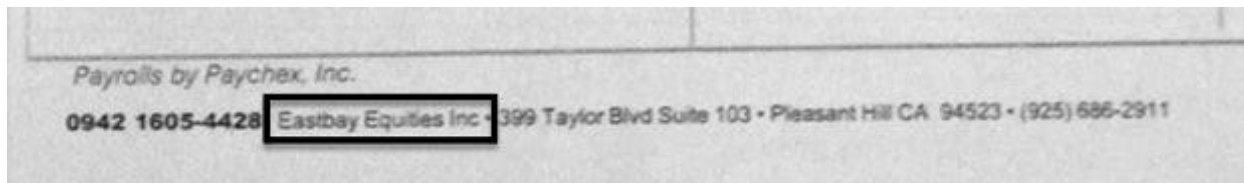
During the relevant time period, EASTBAY has knowingly and intentionally provided Ms. Llamas and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, EASTBAY issued uniform wage statements to Ms. Llamas and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, EASTBAY violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because EASTBAY did not record the time Ms. Llamas and other aggrieved employees spent working during meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), EASTBAY did not list the correct amount of gross wages and net wages earned by Ms. Llamas and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, EASTBAY failed to accurately list the total number of hours worked by Ms. Llamas and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because EASTBAY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, EASTBAY did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, EASTBAY also failed to list the correct amount of net wages in violation of section 226(a)(5). EASTBAY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, EASTBAY issued uniform wage statements to Ms. Llamas and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Ms. Llamas's and other aggrieved employees' wage statements incorrectly list the employer as "EASTBAY EQUITIES INC" but, according to the California Secretary of State's website, there is no such entity by that exact name. However, a similarly named

entity, “EASTBAY EQUITIES, INC.,” is listed on the California Secretary of State’s website with the same address. *See example paystub below.*



The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), EASTBAY willfully failed to maintain accurate payroll records for Ms. Llamas and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, EASTBAY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Llamas and other aggrieved employees, in violation of section 1198. As stated, EASTBAY engaged in a company-wide practice and/or policy of falsifying Ms. Llamas’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Llamas and other aggrieved employees. Furthermore, in light of EASTBAY’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, EASTBAY kept no records of meal start and end times for second meal periods.

Because EASTBAY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Llamas and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that

they were paid correctly and in full. Instead, Ms. Llamas and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Llamas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, EASTBAY failed to pay Ms. Llamas and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Llamas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

EASTBAY willfully failed to pay Ms. Llamas and other aggrieved employees who are no longer employed by EASTBAY all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving EASTBAY's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Llamas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right “on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee.”

During the relevant time period, on information and belief, EASTBAY required Ms. Llamas and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, EASTBAY required Ms. Llamas and other aggrieved employees to sign verifications at the end of each pay period, stating that they had taken all meal and rest periods, regardless of if they were provided with a compliant meal period or permitted or authorized to take a compliant rest period. EASTBAY compelled Ms. Llamas and other aggrieved employees to sign this false verification when they, in fact, had not received all earned and unpaid wages, including overtime wages, minimum wages, and meal and rest period premium wages. EASTBAY’s policy and practice of requiring Ms. Llamas and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

Ms. Llamas and other aggrieved employees are therefore entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

Upon information and belief, EASTBAY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because EASTBAY failed to pay Ms. Llamas and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

During the relevant period, EASTBAY had a company-wide practice of sending Ms. Llamas and other aggrieved employees home early from their shifts, including before they had worked at least

half of their regular shift, but would not pay Ms. Llamas and other aggrieved employees for half of their scheduled shift. Although Ms. Llamas and other aggrieved employees would report to work based on the schedule that EASTBAY provided to them, EASTBAY would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. For example, Ms. Llamas would report to work and, 1-2 times per month, would be told to go home after she had worked only two (2) hours because business was slow, yet was not paid for half of her scheduled shift. Accordingly, Ms. Llamas and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Ms. Llamas and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

EASTBAY’s California restaurant locations are generally similar in their layout and design and there was, and continues to be, space behind each cash register to allow for the presence and use of a seat or stool by Ms. Llamas and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. EASTBAY could provide Ms. Llamas and other aggrieved employees with a seat or stool at its cash registers, but instead denies them seating and forces aggrieved employees to stand throughout the day.

Ms. Llamas and other aggrieved employees spent a substantial portion of their day behind these cash registers, regardless of their actual job title or description. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, EASTBAY systematically, and on a company-wide basis, does not provide seats or stools at or near cash registers, forcing Ms. Llamas and other aggrieved employees to stand throughout their work shifts.

EASTBAY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because Ms. Llamas and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. EASTBAY's management did not inform Ms. Llamas and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of EASTBAY's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Llamas and other aggrieved employees were forced to stand during shifts and denied seats. EASTBAY's failure to provide suitable seating to Ms. Llamas and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(A).

Ms. Llamas and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring EASTBAY into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, EASTBAY's California restaurant locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Llamas and other aggrieved employees during lulls in operation. EASTBAY could provide Ms. Llamas and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Ms. Llamas and other aggrieved employees to stand throughout the day.

EASTBAY did not provide Ms. Llamas and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Llamas and other aggrieved employees engaged in duties

in which the nature of the work required standing, EASTBAY denied them the use of seats nearby during lulls in their work duties. Moreover, EASTBAY did not inform Ms. Llamas and other aggrieved employees of their rights to a seat or stool under California law.

As a result of EASTBAY's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Llamas and other aggrieved employees were forced to stand during shifts and denied seats. EASTBAY's failure to provide suitable seating to Ms. Llamas and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Ms. Llamas and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring EASTBAY into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, EASTBAY, on a company-wide basis, required Ms. Llamas and other aggrieved employees to utilize their own personal vehicles to carry out company business, such as picking up restaurant supplies, but failed to reimburse them for all costs of travel, including mileage. For example, on more than one occasion, Ms. Llamas was required to drive her own vehicle to another EASTBAY restaurant location in Livermore, California during her shift to pick up ingredients and supplies, which was approximately 13 miles round trip. Although EASTBAY required that Ms. Llamas and other aggrieved employees use their own vehicles and complete these tasks as part of their job duties, EASTBAY never reimbursed them for their travel expenses.

Second, during the relevant time period, EASTBAY, on a company-wide basis, required Ms. Llamas and other aggrieved employees to report to work wearing clean uniforms while simultaneously failing to provide employees with an adequate number of those uniforms. This forced Ms. Llamas and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. For example, Ms. Llamas was only given two (2) uniform shirts, one (1) uniform hat, and one (1) uniform apron during her employment. Due to the nature of her work, Ms. Llamas's uniform would become stained and/or acquire an unpleasant odor, and Ms. Llamas would be required to wash these uniforms 2-3 times per week.

EASTBAY could have provided Ms. Llamas and other aggrieved employees with the actual tools required for use on the job, such as company vehicles and an adequate number of uniforms and/or access to laundering services. Or, EASTBAY could have reimbursed employees for their mileage, travel expenses, and laundering costs. Instead, EASTBAY passed these operating costs off onto Ms.

Llamas and other aggrieved employees. At all relevant times, Ms. Llamas did not earn at least two (2) times the minimum wage.

Thus, EASTBAY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Llamas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” EASTBAY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Llamas’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Llamas seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Llamas, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against EASTBAY for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Llamas seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Llamas’s reasonable attempt to settle her dispute with EASTBAY prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform EASTBAY of Ms. Llamas’s aforementioned grievances and the proposed remedies as detailed below, while affording EASTBAY a reasonable opportunity to satisfy Ms. Llamas’s demands.

Demand is hereby made that EASTBAY shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. EASTBAY shall pay Ms. Llamas and all other aggrieved employees employed by EASTBAY at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. EASTBAY shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. EASTBAY shall conduct a survey or interview all current and former aggrieved employees in California who worked for EASTBAY in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel and uniform maintenance expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. EASTBAY shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. EASTBAY also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. EASTBAY shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for EASTBAY's benefit, including, but not limited to, costs of travel expenses, mileage, and uniform maintenance or laundering costs, as required by Labor Code section 2802.
6. EASTBAY shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. EASTBAY shall provide Ms. Llamas and all aggrieved employees employed by EASTBAY at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. EASTBAY shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks (Labor Code section 206.5).
9. EASTBAY shall implement and provide suitable seating to all aggrieved employees.
10. EASTBAY shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. EASTBAY shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1194.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Julian Quattlebaum
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Julian Quattlebaum", written over a light gray horizontal line.

Julian Quattlebaum

Copy: EASTBAY EQUITIES, INC. (via U.S. Certified Mail); EASTBAY EQUITIES
MANAGEMENT, LLC (via U.S. Certified Mail)



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

EASTBAY EQUITIES, INC.
399 TAYLOR BLVD, SUITE 103
PLEASANT HILL CA 94523



9590 9403 0424 5163 3610 77

2. Article Number (Transfer from service label)

7019 2280 0000 7398 6855

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt



7019 2280 0000 7398 6855

EASTBAY EQUITIES, INC.
399 TAYLOR BLVD, SUITE 103
PLEASANT HILL CA 94523

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 4.50
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.43

Sent To

EASTBAY EQUITIES, INC.

Street and Apt. No., or PO Box No.

399 TAYLOR BLVD, SUITE 103

City, State, ZIP+4® PLEASANT HILL CA 94523

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
HereLlamas v. Eastbay
Equities, Inc.

Stone

LAW APC

1000 Park East, Ste 1000
Pleasant Hill, CA 94523

CERTIFIED MAIL



7019 2280 0000 7398 6848

one
LAW APC
y Park East, Ste 1000
, CA 90067

EASTBAY EQUITIES MANAGEMENT, LLC
399 TAYLOR BLVD, SUITE 103
PLEASANT HILL CA 94523



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

EASTBAY EQUITIES MANAGEMENT, LLC
399 TAYLOR BLVD, SUITE 103
PLEASANT HILL CA 94523



9590 9403 0424 5163 3610 60

2. Article Number (Transfer from service label)

7019 2280 0000 7398 6848

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery or \$500

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

Street and Apt. No., or Po Box No.

City, State, ZIP+4®

EASTBAY EQUITIES MANAGEMENT, LLC
399 TAYLOR BLVD, SUITE 103
PLEASANT HILL CA 94523

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark

Here
Llamas v. Eastbay
Equities Management
LLC

7019 2280 0000 7398 6848

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

EASTBAY EQUITIES MANAGEMENT, LLC
399 TAYLOR BLVD, SUITE 103
PLEASANT HILL CA 94523

**9590 9403 0424 5163 3610 60****2. Article Number (Transfer from service label)****7019 2280 0000 7398 6848****COMPLETE THIS SECTION ON DELIVERY****A. Signature****X***C19*☐ Agent☐ Addressee**B. Received by (Printed Name)***C19***C. Date of Delivery***9-22-10***D. Is delivery address different from item 1?**☐ Yes

If YES, enter delivery address below:

☐ No**3. Service Type**

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Bevin Allen Pike (SBN: 221936); Orlando Villalba (SBN: 232165); Capstone Law, APC Trisha Monesi (SBN: 303512) 1875 Century Park East, Suite 1000 Los Angeles, CA 90067 TELEPHONE NO.: (310) 556-4811 FAX NO.: (310) 943-0396 ATTORNEY FOR (Name): Plaintiff - Judit Llamas		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY NOV 23 2020 CLERK OF THE SUPERIOR COURT By Carolyn Lemos, Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: René C. Davidson Courthouse		CASE NUMBER: 5820091536 JUDGE: DEPT:	
CASE NAME: Judit Llamas vs. Eastbay Equities, Inc., et al.			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other P/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other P/DPDWD (23) Non-P/DPDWD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-P/DPDWD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. ☐ Large number of separately represented parties
b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☒ Substantial amount of documentary evidence | d. ☒ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. ☐ Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 23, 2020

Bevin Allen Pike

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title:

Case Number

Judit Llamas vs. Eastbay Equities, Inc., et al.

RA20081536

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

[X] Oakland, Rene C. Davidson Alameda County Courthouse (446) [] Hayward Hall of Justice (447)
[] Pleasanton, Gale-Schenone Hall of Justice (448)

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	[] 34 Auto tort (G) Is this an uninsured motorist case? [] yes [] no
Other PI /PD / WD Tort	Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD tort (23)	[] 75 Asbestos (D) [] 89 Product liability (not asbestos or toxic tort/environmental) (G) [] 97 Medical malpractice (G) [] 33 Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07) Civil rights (08) Defamation (13) Fraud (16) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)	[] 79 Bus tort / unfair bus. practice (G) [] 80 Civil rights (G) [] 84 Defamation (G) [] 24 Fraud (G) [] 87 Intellectual property (G) [] 59 Professional negligence - non-medical (G) [] 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36) Other employment (15)	[] 38 Wrongful termination (G) [X] 85 Other employment (G) [] 53 Labor comm award confirmation [] 54 Notice of appeal - L.C.A.
Contract	Breach contract / Wrnty (06) Collections (09) Insurance coverage (18) Other contract (37)	[] 04 Breach contract / Wrnty (G) [] 81 Collections (G) [] 86 Ins. coverage - non-complex (G) [] 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14) Wrongful eviction (33) Other real property (26)	[] 18 Eminent domain / Inv Cdm (G) [] 17 Wrongful eviction (G) [] 36 Other real property (G)
Unlawful Detainer	Commercial (31) Residential (32) Drugs (38)	[] 94 Unlawful Detainer - commercial [] 47 Unlawful Detainer - residential [] 21 Unlawful detainer - drugs Is the deft. in possession of the property? [] Yes [] No
Judicial Review	Asset forfeiture (05) Petition re: arbitration award (11) Writ of Mandate (02) Other judicial review (39)	[] 41 Asset forfeiture [] 62 Pet. re: arbitration award [] 49 Writ of mandate Is this a CEQA action (Publ.Res.Code section 21000 et seq) [] Yes [] No [] 64 Other judicial review
Provisionally Complex	Antitrust / Trade regulation (03) Construction defect (10) Claims involving mass tort (40) Securities litigation (28) Toxic tort / Environmental (30) Ins covrg from cmplx case type (41)	[] 77 Antitrust / Trade regulation [] 82 Construction defect [] 78 Claims involving mass tort [] 91 Securities litigation [] 93 Toxic tort / Environmental [] 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	[] 19 Enforcement of judgment [] 08 Confession of judgment
Misc Complaint	RICO (27) Partnership / Corp. governance (21) Other complaint (42)	[] 90 RICO (G) [] 88 Partnership / Corp. governance (G) [] 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	[] 06 Change of name [] 69 Other petition